HIGH COURT OF CHHATTISGARH AT BILASPUR
(DIVISION BENCH)

CORAM: Hon'ble Shri Fakhruddin, Acting C.J.,
& Hon'ble Shri V.K. Shrivastava, J.

CRIMINAL APPEAL NO.641/90

Moujuram

Vs

State of Chhattisgarh

&

CRIMINAL APPEAL NO. 280/91

State of Chhattisgarh

Vs

Moujuram

JUDGMENT FOR CONSIDERATION

Sd/-
V.K.Shrivastava
Judge

Hon'ble Shri Fakhriddin, Acting C.J.,

Sd/-
Fakhruddin
Judge

Post for 17 /11/2005

Sd/-
JUDGE
17 /11/2005

(25)

HIGH COURT OF CHHATTISGARH : BILASPUR
(Division Bench)

CORAM: Hon'ble Shri Fakhruddin, Acting C.J., &
Hon'ble Shri Vijay Kumar Shrivastava, J.

CRIMINAL APPEAL No. 641/90

Appellant — **Moujuram,**
s/o. Ramdas Sahu,
aged 26 years,
r/o. village Mokhali,
PS Lalbag,
Tahsil/Dist.
Rajnandgaon, (CG)

Vs

Respondent — **State of Chhattisgarh**

Criminal Appeal No.280/91

Appellant — **State of Chhattisgarh**

Vs.

Respondent — **Moujuram,**
s/o. Ramdas Sahu,
aged 26 years,
r/o. village Mokhali,
PS Lalbag,
Tahsil/Dist.
Rajnandgaon, (CG)

PRESENT

Mr. C.R. Sahu, Counsel for the appellant in Criminal Appeal No.641/90 and respondent in Criminal Appeal No. 280/91.

Mr. Ashish Shukla, Additional Public Prosecutor for the appellant/State in Criminal Appeal No.280/91 and respondent/State in Criminal Appeal No.641/90

JUDGMENT

(Delivered on 17/11/2005)

Per Vijay Kumar Shrivastava, J.

IInd Additional Sessions Judge, Rajnandgaon vide judgment of conviction and order of sentence passed on 23/06/1990 in Sessions Trial No.35/90 acquitted the accused Moujuram for offence punishable under Section 307 of the I.P.C., and held him guilty for committing offence punishable under Section 323 of the IPC and sentenced him to undergo rigorous imprisonment for one year. Being aggrieved by the said order of acquittal, State has preferred the appeal and against the conviction and sentence accused has also preferred the appeal. Since both these appeals arise out of same judgment of conviction and sentence, they are heard analogously and are being disposed of by this common judgment.

2) Prosecution story, in brief compass, is that Indravati Bai a widow was living alone in village Mokhali and was doing the work of labour for her livelihood. She had developed illicit relation with the accused and consequently conceived. After 4 – 5 months of pregnancy, she apprised the fact to accused who proposed her to get herself aborted by accompanying him to Rajnandgaon. She agreed to his proposal and on 30/06/1989 she along with accused sitting on carrier seat of the cycle driven by accused was going to Rajnandgaon. On way when they reached near a brook accused compelled her to lay down and thereafter by a pointed nail stabbed her on front and back of chest, back of neck, and hand. She received various injuries as a result of that she was profusely bleeding. When she was crying to save herself, one woman saw the incident, on seeing this, the accused left her in injured condition and ran away from the spot on his cycle. She

came to village Mokhali and informed to some of the woman residents of that village about the incident and thereafter lodged first information report in Police Station Lalbag.

3) After recording the first information report Police investigated the crime. During investigation Indravati Bai was got examined by the Medical Officer. On the memorandum of accused, weapon used in inflicting the injuries on the body of Indravati Bai, was recovered and seized. It was also got examined by the Medical Officer Dr.S.K. Agrawal. Blood stained blouse of Indravati Bai was also seized from her. On medical examination various injuries on the front side and back side of the chest, injury over the bridge of nose and right shoulder, were found. It was also found that Indravati Bai was pregnant of 4 -5 months. After examining the weapon, the Medical officer also gave opinion that the injuries received by Indravati Bai could be caused by the seized weapon. The witnesses were examined under Section 161 of the Cr.P.C. After completion of the investigation the charge sheet was led in the Court of Chief Judicial Magistrate, Rajnandgaon, who committed the case to the Court of Sessions for trial.

4) Charge under Section 307 of the IPC was framed against the appellant which was read over and explained to him, who abjured his guilt and pleaded that he is innocent.

5) Learned trial Court, after appreciating the evidence on record, held that prosecution failed to establish the offence under Section 307 of the I.P.C., beyond reasonable doubt, however,

proved that accused voluntarily caused simple hurt to Indravati Bai, therefore, learned trial Court convicted and sentenced the accused under Section 323 of the I.P.C.

6) Both the parties are heard and record of Court below perused.

7 Doctor S.K. Agrawal (PW/10) in his statement has deposed that on 30/06/1989 on examining Indravati Bai following injuries were found on her body.

> *"1) 3 lacerated injuries (stab injuries) over back of chest intrascapular region left side size 1 cm x ½ cm each. The depth of the wound could not be measured.*
>
> *2) 4 lacerated wounds on front of chest and left side (stab injuries) size 1 cm x ½ cm depth of the injury could not be measured.*
>
> *3) One lacerated injury over the bridge of nose 1 cm x ½ cm.*
>
> *4) Two lacerated wounds on forearm right near wrist size of 1 ½ cm x ½ cm. Bleeding from the wounds present.*

From his cross-examination nothing material has been brought to discredit his evidence. Therefore, his evidence is credible and according to his evidence, it was proved that in the front and back side of chest various stab injuries were found on

the body of Indravati Bai and other injuries were on nose and forearm.

8) Indravati Bai (PW/7) in her statement has deposed that she developed illicit relation with accused Moujuram and conceived thereby. She was pregnant and when she appraised the accused that she was carrying 4 – 5 months' pregnancy, accused suggested her to accompany him to Rajnandgaon where he will get herself properly treated. Therefore, she along with accused sitting on the carrier of bicycle of accused proceeded for Rajnandgaon. On way near Bothipara culvert, accused asked her to lay down. Being denied, the accused lifted and took her near Kumhalouri where he led her down and inflicted various injuries on her chest, neck and hand by an iron rod. When the accused assaulted her, she cried out and, therefore, accused left her there and ran-away on his bicycle. Although a lengthy cross examination has been done, but, so far as causing of injuries by accused on the body of Indravati Bai is concerned, nothing has been brought in her cross-examination so as to discredit her evidence.

9) Sukhitram (P/W/3) a resident of Kumhalouri, in his statement has deposed that in the month of Asadh, a woman resident of Mokhali came to his shop in injured condition. When accused was brought she identified the accused and stated that he was the person who wielded injuries on her body. He was confronted with his statement recorded under Section 161 of the Cr.P.C. Certainly in Ex.D/1 it has not been stated in detail that accused was brought and the victim identified the accused, but in that statement it has been specifically mentioned that accused was

taking Indravati Bai for abortion and on way near Nala, had assaulted her. There is no contradiction on substantial fact as also in the cross-examination nothing substantial has been brought to discredit his version.

10) Prembai (PW/8) in her statement has deposed that Indravati Bai came to her village Kunhalouri in injured condition and from her injuries blood was oozing who appraised her that a man of her village Mokhali while taking her to village Bodena on a bicycle near Nala assaulted her by an iron nail. Although she was confronted with her statement recorded under Section 161 of the Cr.P.C., but could not bring any substantial contradiction as also in rest of her cross examination nothing has been brought to disbelieve her.

11) Ex.P/5 is the first information lodged by Indravati Bai (PW/7) and has been proved by Indravati Bai (PW/7) and G.P. Mishra (PW/9). The report was lodged within three hours of the incident and the report was made against the accused wherein Indravati Bai has clearly alleged that accused by a pointed nail wielded various injuries on front and back side of her chest and hand.

12) From Ex.P/6-A the medical report, it is apparent that soon after the incident, Indravati Bai was examined, who had various stab injuries on front and back side of her chest. From the oral evidence of Indravati Bai which is duly corroborated with the statement of Sukhitram (PW/3) and Prembati (PW/8) and corroborated by documents, Ex.P/5, first information report,

Ex.P/6-A medical report and medical evidence of Dr. S.K. Agrawal (PW/10), it is clearly proved that all the injuries found on the body of Indravati Bai have been caused by the accused.

13) Ex.P/1 is the memorandum statement of accused and Ex.P/2 is the seizure memo vide which an iron rod has been seized from the accused. From the oral evidence of Chensingh (PW/4) and Dasruram (PW/5), it is established that accused took these persons and police officials near Dhodga and from bush one iron rod was recovered and seized. Ex.P/1 and P/2 have been proved by the evidence of Chensingh (PW/4, Dasruram (PW/5) and G.P. Misnra (PW/9). G.P. Mishra (PW/9) also deposed that after seizure the said iron rod was sent to medical officer vide letter Ex.P/9 for his opinion. Dr. S.K. Agrawal (PW/10) in his statement deposed that he examined the iron rod and opined that the injuries found on the body of Indravati Bai could have been caused by this weapon. His report is Ex.P/9A. It is clear that on the memorandum of accused one iron rod having pointed one side, was seized and on examination it was opined by medical officer that the injuries found on the body of Indravati Bai could have been caused by it. Therefore, it is established that the injuries have been caused by iron rod having one terminal pointed.

14) Learned trial Court after appreciating the evidence on record held that all the injuries described in medical report (Ex.P/6-A) by Dr. S.K. Agrawal (PW/10) which were found on the body of Indravati Bai were caused by iron rod which was recovered and seized on the information given by the accused. Learned trial

Court only on the ground that the depth of injuries have not been measured and medial officer failed to opine the nature of injuries and to give any opinion regarding gravity of the injuries held the accused guilty only for committing offence of voluntarily causing simple hurt.

15) Hon'ble the Apex Court rendering judgment in ***State of Maharashtra Vs. Kashirao and others, reported in AIR 2003 SC 3901*** and in ***Parsuram Pandey Vs. State of Bihar, reported in 2005 Supreme Court Cases (Cri.) 113*** has observed the ingredients required for offence under Section 307 of the I.P.C. Relevant portion of para 20 of the judgment in ***State of Maharashtra*** (supra) is reproduced below:

> *"**20**. The essential ingredients required to be proved in the case of an offence under Section 307 are;*
>
> *(i) that the death of a human being was attempted;*
>
> *(ii) that such death was attempted to be caused by or in consequence of the act of the accused;*
>
> *(iii) that such act was done with the intention of causing such bodily injury as: (a) the accused knew to be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous*

that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury".

16) Relevant portion of para 15 of the judgment in **Parsuram Pandey** (supra) is reproduced below:

"15. To constitute an offence under Section 307 two ingredients of the offence must be present:

(a) an intention of or knowledge relating to commission of murder, and

(b) the doing of an act towards it.

For the purpose of Section 307 what is material is the intention or the knowledge and not the consequence of the actual act done for the purpose of carrying out the intention. The section clearly contemplates an act which is done with intention of causing death but which fails to bring about the intended consequence on account of intervening circumstances. The intention or knowledge of the accused must be such as is necessary to constitute murder. In the absence of intention or

> *knowledge which is the necessary ingredient of Section 307, there can be no offence "of attempt to murder". Intent which is a state of mind cannot be proved by precise direct evidence, as a fact it can only be detected or inferred from other factors. Some of the relevant considerations may be the nature of the weapon used, the place where injuries were inflicted, the nature of the injuries and the circumstances in which the incident took place".*

17) In the instant case, accused inflicted injuries by pointed iron rod i.e., 1 ¼ feet and actually pierced with the said rod in the front and back side of the chest of Indravati Bai, which are vital parts. The weapon used clearly shows that by inflicting injuries on human vital parts, it may cause death. Accused not only caused a single blow, but caused various stab injuries and out of those injuries, three were in the front side of the chest. It is also clear that as she cried out while she was being stabbed by the accused for her rescue, the accused left her and ran away, otherwise, it was clear that accused was not leaving her alive on the spot. Evidence of Medical Officer Dr. S.K. Agrawal (PW/10) clearly states that the injuries have depth, therefore, could be measured only by Surgical specialist and to measure injury that might have been dangerous for the patient. It clearly indicates that the stab injuries caused to Indravati Bai were such which

were dangerous for the life of Indravati Bai. In offence under Section 307 of the IPC only factor is not the injury or its nature, but a number of factors circumstances, nature of injury, weapon used, interruption etc., are required to be taken into consideration. Here, in the instant case, it is established that on way accused led her down, thereafter accused who was carrying the weapon with him brutally pierced in the body of Indravati Bai and caused number of stab injuries on her vital parts who on raising voice for rescue by the victim left and ran away, all that clearly shows the intention of accused to kill her and all these circumstances when taken together establish that the accused attempted murder of Indravati Bai and this is not a case of only causing voluntarily simple hurt to Indravati Bai.

18) On the basis of aforementioned reasons and having considered the facts and circumstance of the case, we are of the opinion that the appeal preferred by the accused being devoid of merits fails and the appeal preferred by the State deserves to be allowed. We, therefore, held the accused Moujuram guilty of offence punishable under Section 307 of the I.P.C. For hearing the accused on sentence to be imposed on him, the judgment is postponed for a while at this stage.

Sd/-
Fakhruddin
Judge

Sd/-
V.K.Shrivastava
Judge

Raju

Later on

Heard on sentence.

(37) (36)

Although the accused is the first offender and the appeal is old one, but these factors are not sufficient to show any leniency towards accused who brutally inflicted injuries on a woman over her chest with a pointed weapon.

Taking into consideration all the facts and circumstances of the case, the appellant is sentenced under Section 307 of the I.P.C., to undergo R.I. for five years and to pay fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for five months. Set off is allowed in accordance with Section 428 of the Cr.P.C.

Sd/-
Fakhruddin
Judge

Sd/-
V.K.Shrivastava
Judge

17/11/2005

Raju